IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7089 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IRFAN @ SIRAJPADA GHANCHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7089 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/12/2001

ORAL JUDGEMENT

The present petition has been filed by the petitioner who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order

dated 29/5/2001 passed by the Police Commissioner, Vadodara City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the nine criminal case registered against the petitioner detenu under the Indian Penal code and also relying upon statement of witnesses recorded by the detaining authority. Here in the present case it is pertinent to note that in all total 8 representations have been sent by the petitioner, out of which first one has been sent through advocate and it reveals that periodically representation has been sent to the detaining authority practically on the same point except only one or two line change in para 4 and it is a 5 page repeated representation made by the petitioner through advocate in English. The detaining authority is not in a position to reply the representation in a same fashion every time. One may make some typical mistake and because of that the detenu will stand up through his advocate in the court and pray for technical defence. In my opinion, it is nothing but teh cattle trap arranged by the detenu either personally or through advocates but this practice is required to be stopped as expeditiously as possible. If the detenu has got any strong ground then he is at liberty to make representation as and when the ground is available to him but the representation should not be made in such a fashion for the purpose of trapping the respondent and ultimately getting some benefit out of it. Even out of it some representations have been sent by the

petitioner after filing of the petition and thereafter amendment application has been moved. The petition has been affirmed on 6/12/2001 and representations have been sent on 7/12/2001, 8/12/2001 and 12/12/2001 without waiting further into the matter, and he has got courage to take this type of contention but the such practice has not been accepted by this Court even in past also. But at this stage, the learned advocate for the petitioner has given assurance to this court that in future he will take reasonable care and will make required representation in teh interest of detenu.

The learned advocate for the petitioner has further submitted that on the date of passing detention order, the petitioner was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order. In this connection, he has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances Act, 1988, S.3(1)"

4. It appears that on the date of passing the detention order, the detenu was in judicial custody, hence in view of the above judgement rendered in the case of Amrutlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 29/5/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Irfan Siraj Pada Ghanchi is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

Rafik